THE
MADRAS LAW JOURNAL.

VOL.] JULY, 1925. [XLIX

LAW REPORTS*

IV.—SYSTEM OF COURTS AND PLEADINGS IN ENGLAND.

As a preliminary to the consideration of English Reports I propose, in this lecture, to give an account of the system of Courts and of pleadings in England.

The English Courts are descended from the Witanagemot or the General Council of the Saxon Kings. William the Conqueror is said to have separated its judicial from its other functions and made them over to Aula Regis or the King's Council presided over by the Chief Justiciar. The Council was composed of the chief officers of State assisted by the Justiciars and the Barons. This Court followed the King wherever he went. This was naturally very inconvenient to parties and a certain amount of devolution of duties also was felt necessary. The Court of Common Pleas was accordingly established and the Magna Carta provided that it should not be going about with the King, but must be permanently stationed at Westminster. It was so called because it had to do with Common Pleas or civil actions between subject and subject as distinguished from the pleas of the Crown or criminal cases. That Court was, according to Coke, "the lock and key of Common Law." It had exclusive jurisdiction over real actions and a concurrent jurisdiction in actions personal and mixed. It was presided over by a Chief Justice and four puisne Justices. Later on, it came to have a certain amount of appellate jurisdiction under certain statutes, *e. g.*, from the decisions of the revising barrister (under 6 & 7 Vict. c. 18) and under the Railway and Canal Traffic Act (1854).

From time to time there was further devolution and a Court of Chivalry was established by Edward I to take cog-

*The fourth of a series of lectures arranged by the University of Madras delivered by Mr. B. Sitarama Rao, Vakil, High Court.

nizance of contracts relating to deeds of arms and war over which the Constable and Marshal presided. The Steward of the Household presided over another Court constituted to regulate the King's household from which sprang the Palace Court in the time of Charles I. This was abolished in 1849. The High Steward with the barons formed the tribunal for trying peers and the right of reviewing decisions of the Lower Courts was also vested in it. This power is now vested in the House of Lords.

Similarly, the Court of Chancery, presided over by the Chancellor, issued writs under the Great Seal in all actions. The Exchequer Court managed the King's revenue. Whatever jurisdiction remained was vested in the Court of King's Bench. It was so called because in theory, the King is present at its deliberations and justice is administered by him personally. Hence the phrase *coram rege*. Its jurisdiction was high and transcendent. It kept all Courts of inferior jurisdiction within bounds. It might remove proceedings from those Courts to itself by what was called the writ of certiorari or by the writ of prohibition, prohibit their further progress in those Courts. It superintended all civil corporations by the right of the King who was the visitor. By writs of *quo warranto*, or actions in the nature of the writ of *quo warranto*, it restrained usurpation of office. By the prerogative writ of *mandamus*, it directed Magistrates and others to do their duty. It had cognizance on the Crown side of all pleas of the Crown. It protected the liberty of the subject by speedy and summary interposition with the writ of *habeas corpus* requiring any person illegally confined to be produced before it. From the duty that this Court had of keeping the Lower Courts within bounds, in (1906) 1 K. B. 32, was inferred the right to punish contempts which had a tendency to interfere with the impartial administration of justice by those Courts. "This," said Willes, J., who delivered the judgment of the Court, "was only the exercise of the duty of seeing that they did impartial justice and if and when the attainment of that end required that the misdeeds of others should be corrected as well as the misfeasances of the inferior Courts themselves, it seems to us that it is no departure from principle but only its legitimate application to a new state of things if others whose conduct tends to prevent the due performance of those duties by these Courts have to be corrected

as well as the Courts themselves." A general power to prevent abuses and oppression is claimed for this Court and Hawkins in his *Pleas of the Crown* states: "Neither is it necessary in a prosecution for any offence in this Court to show a precedent of the like crime formerly punished here, agreeing with the present in all its circumstances, for this Court being the *custos morum* of all the subjects of the realm, wherever it meets with an offence contrary to the first principles of common justice and of dangerous consequence to the public if not restrained, will adapt such a punishment to it as is suitable to the heinousness of it." Its civil jurisdiction was confined to actions of trespass or injury committed *vi et armis* or actions in which the defendant was an officer of the Court or was in the custody of the Marshal. It was the Court of Error from the Courts Palatinate and the Court of Appeal from the Common Pleas and Exchequer Courts under certain statutes for certain matters till the Exchequer Chamber was constituted. Till 1830, appeal lay from it to the House of Lords. By a statute of that year, appeals were made to lie from the three superior Courts of Common Law to the Exchequer Chamber consisting of the Judges of the two Courts other than the Court from which the appeal came.

The Court of Exchequer had exclusive cognizance of actions relating to debts or duties leviable from the subject. The Judges were known as Barons, the chief being known as the Chief Baron. It had concurrent equity jurisdiction with the Courts of Chancery. This work latterly became very extensive; as a result the equity jurisdiction was transferred to the Court of Chancery in 1841.

The way in which these Courts clutched at jurisdiction is an interesting chapter of English legal history. It was one of the fundamental points in the practice of the Common Law Courts that they could not decide a case in the absence of the defendant. In the Common Pleas, if the defendant did not appear on the writ, a summons would be issued. On the summons the Sheriff could order the defendant to find sureties for appearance. If he failed to secure the attendance of the defendant with that, he could distrain his lands. If that also failed, he could outlaw him after which if he appeared in public he could be arrested and brought before the Court. All this was a very laborious process and cost much. The King's Bench and the Exchequer

Courts being specially concerned with the King's business had the powerful weapon of *capias ad respondendum*, a writ directed to the Sheriff to arrest the defendant. To avail themselves of this superior process, parties went to the King's Bench pleading a wholly fictitious trespass *vi et armis* adding *ac etiam* (that is, and also) a claim in debt. It was part of the established jurisdiction of the King's Bench to regulate the affairs of all prisoners in custody of the King's officers. Once arrested for trespass, the defendant was *de facto* in the custody of the King's officers and the case would be within the competence of the King's Bench. The plaintiff had the defendant before the Court without the costly process abovementioned necessary in the Common Pleas and the Court had fresh business. It was easier still and less costly too to assume that he was already in the custody of the Court. This, no doubt, could be done only with the connivance of the Court, but the connivance of the Court being secured, (for the fees were tempting) what is called a Bill of Middlesex came to be presented instead of the original writ. It alleged that the defendant had escaped from custody and was in Middlesex or was lurking or roaming about elsewhere. On those allegations the defendant could be arrested and the trial could be continued in the King's Bench.

The Court of Exchequer improved its business by resort to the writ of *Quo minus* in which the plaintiff averred that he was the King's debtor, that the defendant owed him money and that as he did not pay, he was unable to pay the King's debt and hence the action. These allegations could not be traversed.

The Court of Common Pleas had, as I said before, exclusive jurisdiction over real actions. These actions were very technical and as such very unpopular and they were also important kinds of action which the other Courts did not like to do without. This objective was attained by the invention of the writ of ejectment or rather by its application to suits on title, which could be prosecuted in any of the Common Law Courts. It was so made applicable in the 17th Century. Originally it was only an action by a lessee for damages against any trespasser. For a long time it was his sole remedy but subsequently somewhere in the 15th century, it came to be held that he could recover the land also in that form of action. The way in which such an action was

adapted to the trial of freehold title to land was by alleging a lease to a nominal person, an entry by him and an ouster by another nominal person. It was obvious that an adjudication so arrived at would not bind the actual occupant of the land. The Court accordingly insisted on notice being given to the person in occupation also and gave the latter leave to defend on terms, viz., on his "confessing the lease, entry and ouster." Thus what ostensibly was an action by Doe, the fictitious lessee against the fictitious intruder *Roe* became an action by the real owner of the freehold against the person actually in occupation in which the whole title was gone into. The Court of Common Pleas could not see its business thus taken away by the other Courts without making some attempt to get part of their work. This was done by adding to every sort of action a claim of debt *'ac etiam'* which enabled it to secure the arrest of the defendant by what was called a mesne process. By legislation, the power of arrest on mesne process was extended to the actions of detinue and replevin in 1352, and to action on the case in 1503 which, by that time, included all actions on contracts. Thus all the Courts came to acquire practically identical jurisdiction with powers of arresting on mesne process.

The origin of the Chancery Courts is wrapped up in great obscurity and various theories of its origin have been suggested. One theory is that the Lord Chancellor exercised the residuum of power that remained in the Council after the distribution of some of it as set forth above between the various Common Law Courts by which he dispensed justice in cases not remediable by the ordinary law Courts. According to others, the Chancellor being in charge of the work of issuing original writs, whenever he found that proper remedy was not available by the ordinary writs he retained the case for trial before himself. According to others again, his jurisdiction arose from the practice of referring petitions presented to the King for the exercise of his grace to the Chancellor. As representing the superior residuum power, the Chancellor used to be called "the foot and basis of the civil jurisdiction of Courts." The jurisdiction of Chancery was established and was in full operation during the reign of Richard II. From the records recently published it seems to be clear that in the early times the principal business of this Court was not *uses* but interference in case of trespass, assault, etc., in which parties could not get redress in the Common Law Courts owing

to the power and influence of the defendant. The invention of the writ of subpœna by Waltham, Bishop of Salisbury, in the reign of Richard II gave increased efficiency to the Court. The introduction of uses and trusts at a later period gave it fresh scope for activity. The Chancellor's Court had certain advantage over the Common Law Courts. The Common Law Courts could not issue an injunction and could not direct specific performance. They could not order discovery, or issue interrogatories or examine parties. The Chancery Courts could do all these things. The technicalities of pleading of the Common Law Courts were unknown to them. There the action commenced not with a writ but with a bill or complaint setting forth all the facts on which the Chancellor was asked to do justice. There was great jealousy between the Common Law Courts and the Chancery Court and matters came to a head in James I's time during the Chancellorship of Lord Ellesmere when the question was raised whether the Equity Court could give relief after a decree was passed in the Common Law Courts. Coke was then the Chief Justice of the King's Bench. The King pronounced in favour of the jurisdiction. Lord Bacon, who succeeded Lord Ellesmere, reduced the equity practice into a regular system but did not sit long enough to effect any great change. His successors did little to improve it till we come to the time of Lord Nottingham who was appointed Chancellor in 1673. He was a great lawyer and built up equity jurisprudence on wide and rational foundations. He is called the Father of Equity. But it was during the time of Hardwicke that the most substantial additions to the equity law were made. The successive catchwords of the Chancellors' equitable jurisdiction supply the best key to a historical explanation of the equity doctrines at various times. It was at first regarded as a matter of grace and next as a matter of conscience. The first contributed the idea that the remedy was *discretionary*. From the second arose the theory that equity operated in personam and it was also responsible for the growth of many ideas as to trust and for the practice of granting relief on various grounds of fraud not taken cognizance of by the Courts of Common Law. Nottingham and Hardwicke added another idea—equality, that equality is equity which was made use of specially in the administration of the estates of deceased persons. By reason of the more efficacious remedies possessed by

the Chancery, questions relating to administration were taken to the Equity Courts in preference to the Common Law Courts.

From the time of Henry VIII, the Chancellor had the assistance of the Master of the Rolls in administering equity. He was originally only the chief of the Masters in Chancery. Cardinal Wolsey was the first to devolve judicial duties on him. In the 19th Century the work of Chancery increased and it was found necessary to appoint Vice-Chancellors also. That was by 53 Geo. III, c. 24 (1813). In 1842, when equity jurisdiction was transferred from Exchequer Court two more Vice-Chancellors were appointed to do the increased work. There was great delay in Chancery which is well caricatured by Dickens in *Bleak House*, no doubt, partly due to the great amount of work that fell to be done by these Courts. The methods of Chancery also were partly responsible for it. First, there was a hearing before the Master of the Rolls or the Vice-Chancellor and then a re-hearing before him and then an appeal to the Chancellor, then a re-hearing before him and finally an appeal to the House of Lords. After 1851, the Appeal Court consisting of Lord Chancellor and two Lords Justices heard appeals from the Master of Rolls and the Vice-Chancellors and from thence the appeal lay to the House of Lords. The Lord Chancellor had, in addition to the jurisdiction referred to above, the right of supervision over all charters, letters patent and such other public instruments. He was the visitor in the right of the Crown of all hospitals and colleges of Royal foundation. He was the guardian of infants and lunatics.

Matrimonial and testamentary jurisdiction was originally exercised only by ecclesiastical authorities, that is to say, the Bishop and the Archbishop. During the Commonwealth, much of the work done by these was done by the ordinary Courts. After Restoration, though most of the work they used to do previously did not come back to them, matrimonial and testamentary work did and it continued to be done by them till 1857. In that year the Court of Probate was created to exercise jurisdiction in relation to the granting and revoking of probate and letters of administration. It possessed the same powers throughout England as

the Prerogative Court of the Archbishop of Canterbury. From the Probate Court, the appeal lay to the House of Lords. In the same year, a Court for Divorce and Matrimonial Causes was also established to exercise the jurisdiction hitherto vested in Ecclesiastical Courts in matters of matrimonial as well as the jurisdiction newly created by that Act. The Lord Chancellor, the Chief Justices and the senior puisne Judges of the three Common Law Courts, together with the Judge of the Probate Court styled the "Judge ordinary," were its Judges. From the "Judge ordinary" appeal lay to the full Court.

Justice was described by an Admiralty Judge of the 17th Century as having two wings, one of which spread itself over the land and the other (the Admiralty Court) over the water. It was originally the Court of the Lord High Admiral exercising jurisdiction through his deputy over maritime causes arising on the High Seas not being within the jurisdiction of any of the Common Law Courts. It was a Court of high antiquity, dating it is said, from the time of Richard I, but certainly from the time of Edward III. It was a Court of limited jurisdiction liable to prohibition from the Common Law Courts. They checked by that means the propensity of that Court like other Courts to extend its jurisdiction. The Common Law Courts themselves acquired some jurisdiction over matters within the jurisdiction of the Admiralty Court by permitting the plaintiff to feign that the contract though made on the High Seas was made in some county within the jurisdiction of the Common Law Courts. This Court came into prominence during the Napoleonic wars owing to the large amount of Prize Work it had to do. In 1798, when Lord Stowell was appointed to the Court it attracted very considerable attention. In 1840, the Admiralty Courts Act was passed, which reconstituted the High Court of Admiralty. Its jurisdiction was further extended by the Admiralty Courts Act, 1861, and the Merchant Shipping Acts. Appeals lay from this Court to the Privy Council. The law administered by this Court was not the "ordinary Municipal Law of the country but the law which the English Court of Admiralty either by Act of Parliament or by re-iterated decisions and traditions and principles has adopted as the English Maritime Law." It is derived from various sources,—the laws of Oleron, the Digest and the ordinances. Prior to the Naval Prize Act, 1864,

jurisdiction in matters of prize was exercised by the High Court of Admiralty by virtue of a commission issued by the Crown under the Great Seal at the commencement of each war. The Court was commissioned to try cases before it according to the course of admiralty and the law of nations. In (1916) 2 A. C. 77 a question arose as to how far the Crown had power to alter or prescribe by orders in Council the law the Prize Court had to administer. It was held by the Privy Council that it had no such power.

Sittings in *Banc* (or Bench) of the various Courts were before the coming into operation of the Judicature Acts held at Westminster. Such sittings were distinguished from single Judge sittings in Chancery, Bankruptcy, Admiralty or Divorce Courts or in the Assizes. Three Judges constituted the Court and for the most part questions of law and applications for new trials were dealt with by it. The work included in the case of King's Bench regulation of criminal proceedings. It dealt with special cases and demurrers and also regulated the practice of Courts. The Judges sat by rotation, the Chief Justice presiding.Sometimes one Judge alone sat for justifying bail, discharging insolvent debtors, administering oaths, deciding on matters of motion and for even making rules with the same force and value as might be done by the Court in *Banc* till set aside by the latter. These sittings took place in what was called *Bail Court*. The business of the Court in *Banc* was transferred to the Divisional Court by the Judicature Act of 1873. By S. 17 of the Appellate Jurisdiction Act, 1876, every action and proceeding in the High Court and all business arising out of the same should be tried by a single Judge. Appeals from a single Judge in all matters of practice and procedure as well as judgments in action and proceedings lie to the Court of Appeal. What appellate work still remains is done by the Divisional Court.

The Assize and Nisi Prius Courts acted as auxiliaries to the Court as such. All they did was to try questions of fact submitted to them and to return the findings of the jury whereupon the Court would proceed to give judgment or to hear the parties further on the question—for whom judgment was to be given. These issues of fact had to be tried at Westminster unless *nisi prius, i. e., unless before that time,* the Justices themselves went into the counties in which case these issues were tried locally with the jury.

UNIVERSITY OF CALCUTTA NOT TO BE REMOVED DEPARTMENT OF LAW

The first rude foundation of the Bankruptcy Law was laid by the statute, 34 & 35 Henry VIII, c. 4. It was directed against the fraudulent debtor. The Lord Chancellor, the Lord Treasurer, the Chief Justices of either Bench and Judges of the Privy Council were empowered by the Act to take the offender's lands, and to sell them for the satisfaction of the creditor's rate and rate alike. 13 Eliz. c. 7 was aimed at voluntary settlement. By 7 George I, c. 31 debts payable in the future are made provable in Bankruptcy. 1 & 2 William IV, c. 56 first introduced the Court of Bankruptcy and the Official Assignee.

For a long time only traders were entitled to the privileges of bankruptcy. After a series of Acts commencing in 1813 designed for the protection of honest but insolvent debtors, finally came the Bankruptcy Act of 1861, which extended the relief of bankruptcy to non-traders as well. After a great deal of experimenting the legislature in 1883 adopted official administration accompanied by consultation with creditors "The estate for the creditors" is its motto not for the debtor nor for the trustee. It has also a disciplinary character; it inculcates and enforces a high standard of commercial morality. In 1825, a Court of Bankruptcy with a Chief and 3 puisne Judges was established of whom 3 were to act as a Court of Review or Appeal with a staff of subordinate commissioners acting under the fiat of the Court. In 1847, the Court was abolished and its jurisdiction was transferred to a Vice-Chancellor to be designated by the Lord Chancellor for the purpose. On the establishment of the Court of Appeal in Chancery the Appellate Jurisdiction in Bankruptcy was transferred to that Court. In 1869, a Court known as the London Court of Bankruptcy was established as a principal Court of Record. It was a Court of Equity as well as of law having jurisdiction in the metropolis and the Chief Judge possessed all the jurisdiction of a Judge of one of the superior Courts of Common Law and of a Judge of the High Court of Chancery in addition to the special jurisdiction in Bankruptcy.

The multiplicity of Courts and procedure led to the greatest confusion. The commissioners appointed in 1869 recommended their fusion and as a result, in 1873, the several Courts were united and consolidated into one Supreme Court of Judicature, consisting of the Lord Chancellor, the Lord Chief Justice of England, the Lord Chief Justice of Common Pleas,

Department of Law Library
Acc. No.
Date..............
C. U.

the Chief Baron of Exchequer, the puisne Judges and the Barons, the Master of the Rolls and the Judge of the High Court of Admiralty. All these had to possess equal power, authority and jurisdiction. To make the transition easy, the Court worked in five divisions. (i) Queen's Bench, (ii) Common Pleas, (iii) Exchequer, (iv) Probate, Divorce and Admiralty, (v) Chancery Divisions. As the old Judges died out, in 1880, the offices of the Chief Justice of the Common Pleas and the Chief Baron of Exchequer were abolished and the Courts of Queen's Bench, Common Pleas, and Exchequer were consolidated into one, the Queen's Bench Division. Both the Lord Chancellor and the Master of the Rolls ceased to be ordinary Judges of the Supreme Court subsequently.

L 22295

A Court of Appeal was one of the things strongly recommended by the commission. The Court of Appeal so constituted consisted of the Lord Chancellor, ex-Lord Chancellors, the Lord Chief Justice, the Master of the Rolls and the President of the Probate, Divorce and Admiralty and of a certain number of ordinary Judges known as Lord Justices. In the Court of Appeal was vested the appellate jurisdiction of the Lord Chancellor, the Court of Appeal in Chancery and Bankruptcy, the Court of Exchequer Chamber and of the Judicial Committee in appeals from Admiralty. In Admiralty matters, however, so far as Prize Courts go, the appeal still lies to the Privy Council. From the Court of Appeal appeals lie to the House of Lords. The Court of Appeal has original jurisdiction in certain matters in which the Lord Chancellor had jurisdiction like lunacy.

The Privy Council was the permanent council of the King composed of the principal officers of State—the Lord Chancellor, the Justiciar, the Lord Treasurer and two Archbishops. It exercised legislative, executive and judicial functions. After the establishment of the Courts of Common Law, petitions used to be presented to the King in Council especially in cases where the Courts were likely to be intimidated by a powerful defendant. If such a petition raised a question of law it was usually referred to the Chancellor and out of this practice grew the Chancery jurisdiction. But the King still claimed wide jurisdiction and it was a committee of this council which acted as Star Chamber. The Chamber was abolished in 1640; since then, the Council

has not acted as an original Court. The Act of 1640 did not take away the appellate jurisdiction. The English subjects of the King used to go to the King in Parliament and in course of time the House of Lords was recognised as the Court of Appeal, but the King's Council remained the Court of Appeal for the King's subjects abroad. Down to 1833, appeals to the King in Council were few and were heard by Committees specially appointed. In that year, under 3 & 4 William IV, c. 41, a Judicial Committee was constituted. It consists of all the members of the Privy Council holding or having held the office of Lord President or Lord Chancellor or any of the high judicial offices mentioned in the Appellate Jurisdiction Acts of 1876 and 1887, that is to say, the Lords of Appeal in ordinary, the Judges of the Supreme Courts of England or Ireland or the Court of Session in Scotland. By the Act of 1833, the King was authorised to appoint any two other persons being Privy Councillors, who have held the office of a Judge in the East Indies or in any of His Majesty's Dominions beyond seas. By 58 and 59 Vic. c. 44 it was enacted that Judges of certain Colonies should if members of the Privy Council be members of the Committee. In 1897, the Chief Justices of Canada, Cape Colony and South Australia were swomer of the Council and became members of the Committee. In cases arising under the Clergy Discipline Acts, the Committee is assisted by three bishops acting as ecclesiastical assessors. In appeals from Colonial Admiralty Courts, they are assisted by two nautical assessors. These assessors are not responsible for the judgment.

There is an appeal to the Privy Council in criminal cases also with special leave. As Viscount Haldane said in 44 Cal. 876 : 44 I. A. 137, "The general principle is established that the Sovereign in Council does not act, in the exercise of the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it had not led to injustice of a grave character. Error in procedure may be of a character so grave as to warrant the interference of the Sovereign. Such error, for

example, may deprive a man of a constitutional or statutory right to be tried by a jury or by some particular tribunal or it may be caused to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed." *See* 12 A. C. 459, 41 C. 568, 21 M. L. J. 374 and 26 M. L. J. 621. In 36 M. 501, where inadmissible evidence was admitted and there was not enough other evidence to support the conviction, their Lordships interfered. The judgment takes the form of a report to His Majesty ; if there is any difference of opinion, the report embodies the views of the majority alone and the dissenting opinions are withheld. In 2 P. D. 276, Kelly, C. B. claimed the right to let it be known that he differed, but an order in Council ruled to the contrary.

There is an appeal to the King in Council from the highest Civil Court of each separate colony or province sometimes as of right and sometimes on leave taken. Appeals from Consular Courts lie to it. Under the Naval Prize Act, appeals from the Prize Court lie to it. Under various Acts, appeals from Ecclesiastical Courts also lie to it. Appeals lie to it from all the highest Courts of the Empire unless that right is expressly taken away. Now that the Irish Free State is constituted as a separate entity, appeals from that State lie to the King in Council and not to the House of Lords.

The House of Lords has both original and appellate jurisdiction. Original jurisdiction it has in the trial of Peers for treason, felony or misprison and in the matter of impeachment of a commoner or Peer. Claims to peerages are tried by the House through a Committee of Privileges. It also tries controverted questions of election of Peers and contempt cases, *i. e.*, contempt of its own authority.

Appeals lie to the House of Lords from the judgment of the Court of Appeal in England or of any Court of Scotland or Ireland from which an error or appeal lay to the House of Lords by common law or statute. An appeal also lies from the Court of Criminal Appeal on the certificate of the Attorney-General. The lay Peers have, strictly speaking, the same right to vote on judicial questions as they have on other questions. But since 1883, no lay Peer has attempted to exercise it. No appeal can be heard unless any three of the following are present—the Lord Chancellor, the Lords of Appeal in ordinary, and such Peers of Parliament as have held high judicial office, *i. e.*, that of Lord Chancellor, paid

Judges of the Judicial Committee, the Judges of the Supreme Court of England or Ireland or the Court of Session. The Lord Chancellor, if present, presides.

In criminal cases, till we come to recent statutes, there was no appeal. A writ of error lay to the King's Bench Division from all inferior criminal jurisdictions. Error might be brought for mistakes in indictment as when an offence is improperly or insufficiently described therein or in the judgment or other parts of the record. Writs of error in case of misdemeanour were not allowed as a matter of course, but only on probable cause being shown to the Attorney-General. The King's Bench Judge trying a case might reserve a point for the consideration of all the Judges respiting sentence or postponing judgment. In the case of misdemeanours, tried by a special order on the *nisi prius* side, a new trial might be moved for or obtained as in civil cases. Under the Crown Cases Act, 1848, the Judge at a trial under commission of oyer and terminer or of gaol delivery or the Justices at Quarter Sessions, had a discretion to reserve any point of law. Such a point of law was argued before a Court consisting of five or more Judges of whom the Lord Chief Justice had to be one. By an Act of 1907, a Court of Criminal Appeal is constituted, of which the Lord Chief Justice and all the puisne Judges are Judges. Appeals should be heard by not less than three. Appeals lie on questions of law as a matter of right ; on questions of fact or mixed questions of fact and law by leave of the Judge who tried the case or of the Court of Appeal—on sentence alone by leave of the Court of Appeal. The Court of Appeal takes the place of the Court of Crown Cases reserved.

The rules of pleading play such an important part in the English Law and are so much mixed up in the determination of substantive law that a failure to bear in mind the rules as to pleadings might give a wholly false impression of the legal value of a precedent. These rules were framed in the days of Plantagenets and continued the same till the Common Law Procedure Acts and the Judicature Acts revolutionised the procedure by a system of simple and straightforward pleadings. The practical utility of the rules of pleadings had been seriously impaired by the over-subtlety of pleaders and by the rigour with which the Courts applied the rules.

Pleadings were oral till the time of Edward III when the rule was made that they should be in writing. The plead-

ings used to be entered in the rolls of the Court. In the time of Edward IV the practice of exchanging pleadings before entering them on the rolls came into vogue. At Common Law, the usual method of starting an action was by an original writ. After the writ was issued, the plaintiff had to file a statement of his claim which was called a *conte* or count. If there should be any variance between the writ and the *conte*, the suit failed. Defendant's reply to the plaintiff's claim was called a *plea*. If plaintiff took exception to the plea, that was called a reply. Defendant's answer to it would be a rejoinder. The pleadings might be continued by a sur-rejoinder of the plaintiff. Defendant's further reply to it would be sur-rebutter and so it would merrily go on. Plaintiff had to state the facts on which his cause of action depended. Each cause of action had to be separately stated, but number of such causes of action could be combined provided different kinds of action were not combined in the process. If one count disclosed two causes of action, it was bad for doubleness or duplicity. The facts proved at the trial should not vary with the facts stated. If there was a variance, the action failed, the Court having no power to amend. There were seven classes of personal actions, three in contract, *viz.*, debt, covenant and assumpsit and four in tort, *viz.*, detinue, trespass, trespass on the case and replevin. One kind of action could not be combined with another till 1852 when the Common Law Procedure Act provided that causes of action might be combined provided they were between the same parties. Each plea had to be a complete answer to each count. Any plea which gave two answers to one count was bad for duplicity. Any plea which was inconsistent with itself was bad for inconsistency but it might be inconsistent with another plea. Pleas were of two kinds, dilatory pleas and pleas in bar. Dilatory pleas were pleas of jurisdiction or in abatement. The latter applied where there was an objection like non-joinder of parties. Pleas in bar were those that went to the merits. There were general traverses, that is, a general denial like not *guilty, non est factum* and common traverses, that is, a specific denial of facts. Pleas in confession and avoidance were pleas in justification or excuse or discharge. Estoppel was another kind of plea. Demurrer was a plea which, for purposes of the plea, admitted the matters of fact alleged but denied their sufficiency in law to support the claim. Till the

Common Law Procedure Act, 1852, a party could not plead as well as demur to the same pleading. All these complicated rules of pleading did not make for clearness. Each party was bound no doubt to state the points he wanted to raise with precision. Nevertheless all the other side would know is that plaintiff would prove certain set of facts which would sustain the legal conclusion. Plaintiff might, for instance, sue for money received by the defendant for plaintiff's use. A claim of that sort could be sustained in half a dozen ways. It was not necessary for the plaintiff to say in which one of those ways he was going to sustain the action. Similarly with the defence. In an action for goods sold and delivered the defendant might simply plead that he was never indebted as alleged. He need say no more in his pleading. He might give evidence at the trial either that the goods were not ordered, or that they were not delivered or that credit has been given or that the contract was bad for want of writing under the Statute of Frauds. To mitigate the defects of the Jury system which had come to be the prevailing method of trial of questions of fact, it also became usual in certain forms of action to have recourse to a process known as *color* by which, by the narrating of a fictitious story, the issue of fact was converted into an issue of law. It was so called because by giving the plaintiff the show or color of a title inferior to himself and asking the judgment of the Court, the general issue was avoided. Till the time of George II, no set-off could be pleaded at law but even after the statute (2 George II, c. 22) it could be pleaded only where claims on both sides were liquidated demands.

Some of those defects were removed by the Common Law Procedure Act. The venerable technical rules as to joinder of parties and claims, abatement of writs, fictitious averments in pleadings, "color," inconsistent pleas and as to including several matters in one plea were all abolished. Actions were to be commenced with a simple writ of summons. The action of ejectment was simplified. Courts were given unlimited power of amendment.

The Chancery pleadings, also, though elaborate, were less technical and had more regard for substance. All actions in Chancery began with bills. The facilities for discovery, interrogatories, made parties more aware of the facts that they had to prove or disprove.

The Judicature Act made a thorough change in the law of pleadings. It abolished forms of action. It compelled parties to state facts on which they sought relief and not merely conclusions of law. The general issue was abolished. So also demurrers. The party could formerly insist upon his demurrer being separately argued. It is only by order of Court or by consent of parties that it can be argued separately now. Equitable pleas and defences can be raised now in common law actions and effect given to them. Large powers of counter-claiming also are given. A third party procedure has been introduced, that is to say, third parties might be brought in as defendants against whom indemnity or contribution is claimed by the defendant and decree given against them. The very names of pleadings are changed. On some of these points it will be found that the English Procedure is in advance of the Indian.

As regards appeal, there was a difference in the point of view of Common Law and Chancery. At Common Law, an appeal lay by way of error, on matters of law apparent on the face of the proceedings. The party aggrieved had to sue out of Chancery a writ in error which directed the Chief Justice or Chief Baron or the Judge of the inferior Court concerned to send a manuscript of the record to the Appellate Court. In 1852 a simpler method was substituted of alleging errors in the statement of grounds of appeal served on the other side so as to supersede execution until default in bail or affirmance of judgment or until the proceedings are otherwise disposed of. The mode of appealing from decrees in equity was by an application for re-hearing. The theory of appeal accepted by the Judicature Act is the Chancery view of re-hearing.

SUMMARY OF ENGLISH CASES.

ATHERTON *v.* BRITISH INSULATED AND HELSBY CABLES, LIMITED, (1925) 1 K.B. 421 : 94 L J K. B. 319.

Income-tax—Company—Profits—Lump sum set apart to start pension fund—If a deduction—"Wholly or exclusively laid out or expended for trade, profession, employment or vocation"—Income-tax Act, 1918, *Sch. II.*

A company which was not giving pension to its employees decided to start a pension fund, as otherwise experienced em-

ployees were leaving it for more lucrative service elsewhere. Under the pension scheme, each employee of less than a certain age was to pay 5 per cent of his pay, and the company was to add half as much. As the scheme was to be brought into force at once, and there were people who would claim a pension soon though not contributing anything on account of the rules relating to age, the company paid out of its profits a lump sum of money to provide such pensions before the scheme became self-supporting. They claimed to deduct this amount for purposes of income-tax. *Held,* reversing the decision of Rowlatt, J. it was not money "wholly or exclusively laid out or expended for trade, profession, employment or vocation" and as such was not a proper item of deduction. (1919) 1 K. B. 25 distinguished.

INLAND REVENUE COMMISSIONERS *v.* FISHER'S EXECUTORS, (1925) 1 K B 451 : 94 L J K B 310.

Income-tax—Company—Shareholder—Distribution of profits in the form of debenture stock—Capital or income—Finance Act, 1910, *S.* 66.

A company having a large amount of undivided profits issued to its ordinary shareholders debenture stock in respect of these profits, one of the terms of issue being that the ordinary shareholders should buy out the preference shareholders. The recipients had no option to receive anything in cash. One such shareholder was sought to be made liable for super-tax in respect of these debenture shares. *Held,* reversing the decision of Rowlatt, J., the receipt of debentures cannot be considered as income in the hands of the shareholder and as such there was no liability to pay tax thereon. (1921) 2 A. C. 171 applied.

LAPISH *v.* BRAITHWAITE, (1925) 1 K. B. 474.

Municipal Council—Disqualification—Share or interest in contract—Exemption re *shareholders—Managing Director—Position of—Municipal Corporation Act,* 1882, *S.* 12.

Under S. 12 of the Municipal Corporation Act, a person is disqualified to be a councillor if he has directly or indirectly any share or interest in any contract with the Council, but an exemption is made of persons having a share or interest in any company under the Companies Act. *B* was the managing

director and a shareholder of a company which supplied materials to a Corporation and he acted as councillor while the contract was running. The question arose whether he had rendered himself liable for the penal consequences of violating R. 12. *Held,* by the majority of the Court of Appeal (Atkin, L. J. dissenting) apart from being a shareholder, a managing director was not directly or indirectly interested in the contract and as he was exempted in his capacity of shareholder, he was not liable for the penal consequences. The policy underlying disqualification discussed.

BACK *v.* DANIELS, (1925) 1 K. B. 526 : 94 L. J. K. B. 304.

Income-tax—Land—Occupation of—Lease to potato growers—Profits made by lessees by sale—Basis of taxation—Income-tax Act, 1918, *Schs. B and D.*

Certain potato merchants hired lands for growing potatoes, according to which the owner was to get rent and provide manure, labour, etc. They sold the potatoes and made profits. *Held,* affirming the decision in (1924) 2 K B 432 they were liable to pay tax as occupiers under Sch. B of the Income-tax Act.

KNIGHT *v.* PONSONBY, (1925) 1 K. B. 545 : 94 L. J. K. B. 336.

Practice—Security for costs—Poverty of plaintiff—Change of residence on account of poverty.

An order for security for costs is always refused where the ground alleged is poverty. If owing to poverty a plaintiff has no permanent residence but he neither misdescribes nor conceals his residence, a Court should not order security from him.

SPENCER *v.* ASHWORTH PARTINGTON AND CO., (1925) 1 K. B. 589 : 94 L. J. K. B. 447.

Company—Shares—Sale—Transfer in blank—Vendor's liability to indemnify—Implied contract.

Where the holder of shares in a Company sells them and delivers to the purchaser a transfer in blank, the purchaser is liable to indemnify the vendor against calls made on the shares

after the purchaser has re-sold them and passed on the transfer to a sub-purchaser. There arises in such a case an implied undertaking by the purchaser to indemnify the vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains beneficially interested in them or after he has parted with them. *Humble* v. *Langston*, 7 M. & W. 517 overruled.

KEY *v.* BASTIAN, (1925) 1 K. B. 650 : 94 L. J. K. B. 428.

Criminal Law—Printing matter without name and address of printer—Prosecution—Fiat of Attorney-General—Summons and information to be laid in Attorney-General's name—Omission—Effect of.

Under 33 and 34 Vict. c. 24 a printer who does not indicate on any matter printed by him, his name and address is liable to be prosecuted "in the name of H. M. Attorney-General or Solicitor-General." *Held*, the provision that the prosecution should be in the name of one of the Law Officers of the Crown was a condition precedent and when the summons did not show on its face that the prosecution was in the name of the Attorney-General or Solicitor-General, the whole proceedings are null and void, even though there was in fact the fiat of the Attorney-General prior to the launching of the prosecution. Where prosecution has been started in the name of some one else, the defect cannot be cured by afterwards adding the name of the Attorney-General.

HEATON AND DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., (1925) 1 K. B. 655.

Company—Debenture holders—Rights of—Money paid by Director to avoid execution—Receiver—If can get from Sheriff.

In execution of a money decree against a Company, the Sheriff went into possession. To avoid a sale, the managing director paid the decree amount. While the money still remained in the hands of the Sheriff, the debenture holders who had a floating charge over the property of the Company appointed a Receiver, who claimed back the money from the Sheriff. *Held*, he was not entitled to claim it.

ILFORD URBAN DISTRICT COUNCIL *v.* BEAL AND JUDD, (1925) 1 K. B. 671 : 94 L. J. K. B. 402.

Landowner—Liability—Sewer beneath land—Ignorance of its presence—Effect of.

Where as a result of the acts or omissions of an owner of land, sewer lying underneath is damaged, he is not liable for the same if he did not know of its existence and could not reasonably be expected to know it.

THE MEANDROS, (1925) P. 61.

Shipping—Salvage—Vessel requisitioned by Government—Benefit—Liability of owner.

A ship, which had been requisitioned by the Greek Government, was stranded while in their hands and was saved by the services of the plaintiffs' salvage ship. During the period of the requisition, possession and control were with the Greek Government, but the property remained in the owners. In an action for salvage claims against the owners after the Greek Government had returned the ship, *held,* they were liable to pay.

LOCKETT *v.* NORMAN-WRIGHT, (1925) 1 Ch. 56 : 94 L. J. Ch. 123.

Contract—Specific performance—Lease "subject to arrangements between solicitors"—Conditional agreement.

The defendant who wanted to take a lease of the suit premises had some preliminary interviews with his landlord, and finally wrote to him he was prepared to take the same "subject to suitable agreements being arrived at between your solicitors and mine." Certain repairs were to be effected to the tenant's satisfaction and the latter being dissatisfied as to the same refused to proceed further, whereupon he was sued for specific performance. *Held,* the letter was not an unconditional acceptance of any previous offer, and the execution of a suitable agreement by the solicitors of both parties was a condition of any concluded bargain. There being no concluded contract, the action was not maintainable. (1921) 1 Ch. 57 ; 291 ; (1924) 1 Ch. 97 followed.

In re COMBE : COMBE *v.* COMBE, (1925) 1 Ch. 211.

Will—Power of appointment—No gift over if power is not exercised—Effect—Intestacy.

Under the will of a testator his wife and only son were appointed executors ; the income was to be paid to his widow during her life and on her death or re-marriage to his son for life and thereafter to any relation of the testator of the whole blood whom the son appoints by will. There was no gift over in default of appointment. *Held,* as the testator did not show any intention to create a trust in favour of the objects of the power, after the two life interests created, the property would go as an intestacy if the son released his power of appointment.

There is no inflexible and artificial rule of construction to the effect that where a power of appointment to a class is not followed by any gift in default of appointment, the Court is bound to imply a gift to that class in default of the exercise of the power.

JOTTINGS AND CUTTINGS

Costly Litigation.—The outcry, in various quarters, against the excessive cost of litigation is not unwarranted, whether it refers to the expenditure of tens of thousands of pounds on a society *cause celebre,* or " to an action in the County Court to recover £66," upon losing which the plaintiff, in addition to his own costs, was faced with " a bill of the defendant's taxed costs amounting to £57-11-4." The criers out, however, almost invariably fail to address themselves to the problem with any sort of reasonableness, and little useful purpose is served by their discussions. It might be remembered, for example, that the action to recover the £66 above referred to, very probably involved the same expenditure of time and trouble, for the defendant's legal adviser, as would a claim of the same nature for £660, and it may well be that litigants were not altogether blameless in the matter, who elected to incur a joint expense of over £100 to compose a £66 quarrel. A first step to solving the problem of providing a fair means of litigating very small, but inevitable, disputes is that the prospective clients should be as considerate of the lawyers' difficulties as the lawyers are expected to be of the clients'. The protest against costly litigation which we have before us, but which we will not

identify, embarks on a diatribe not only against all lawyers, but against all professional men. Dealing with speculative debt collectors, it says : " Their clients largely consist of members of the medical profession, who do not think it undignified to hand over their defaulting patients to the tender mercies of men who will stop at nothing, even to the wrecking of homes, to extort payment." Everyone knows how many bad debts doctors incur, and how rarely they dare, or care, "to extort payment." If our protestor regards "litigation" as "costly" because it compels him to pay his bills, especially his doctors' bills, then we mav go so far as to retort : " the costlier, the better."

—*The Law Journal*, April 18, 1925, p. 363.

***

Defending the Guilty.—An old controversy is revived in Judge Bowen Rowland's reminiscences : Should an advocate defend a man whom he knows to be guilty ? The Liverpool *Daily Post* observes that a precedent is to be found in the decision of Courvoisier's counsel, approved by Baron Parke, to continue their defence of Courvoisier notwithstanding the latter's private admission that he had murdered his master, Lord William Russell. A Welwyn Garden City paper, the *Pilot,* expresses horror at the approval given to such a decision by Hawkins, J., and observes that lawyers, if they in general agree with that approval, deserve the worst that is ever said of them; and there is no doubt that many laymen are of the same way of thinking. Yet Hawkins, J., it is submitted, was obviously right and merely gave utterance to what is a fundamental rule of the profession. Indeed, it is within the experience of most of us that a Judge has ordered a case to be tried out notwithstanding that the accused has tendered from the dock a plea of guilt, and counsel has been requested to undertake the defence. The principle is an elementary one to lawyers, that every subject is entitled to have his case argued and is entitled to demand of the advocate, whom he selects,that this advocate should state his case in the most favourable way possible and should not assume, uninvited, the attributes of the Judge or the Jury. If the client is so unhelpful as to state, rightly or wrongly, that he is guilty, then the advocate may not call him as a witness of his own innocence, but must confine him self to the putting of the prosecution to strict proof. Even in the rare and extreme case when the advocate is thus embarrassed, no serious damage is done to the cause of justice,

which is adequately represented by others, who may be relied upon to note the fact that the accused person maintains a non-committal silence. It is a principle, universally and gladly accepted, that every man is presumed to be innocent until his guilt is proved. How comes it, then, that so many intelligent people are amazed that advocates make it their first duty to act upon that principle ?

—*The Law Journal,* April 25, 1925, p. 386.

***

An Idol's Next Friend.—The Judicial Committee is, as we all know, a very interesting tribunal. Whether the Supreme Court of the United States, or the Judicial Committee, is the greatest Court in the world is matter of opinion, but no doubt when the Permanent Court of International Justice gets really to work it will have the premier place. The Judicial Committee is mainly interesting for the variety, and may we say from our insular point of view, the oddity of the questions that come before it. In the case of *Mullich* v. *Mullich* (*Times,* 29 ult.)—we have shortened the title—it has had to consider a provision in a will for the maintenance of an idol, and, without turning a hair, so to speak, it has directed that the idol should appear by a disinterested next friend appointed by the Court. That, no doubt, is all right, for as Lord Shaw, in delivering the judgment of the Committee said: " A Hindu idol is—according to long-established authority, founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law—a ' juristic entity.' It has a juridical status, with the power of suing and being sued." A *dictum* which illustrates the wide tolerance of the British Empire.

—*The Law Journal,* May 2, 1925, p. 410.

***

Indian Idols and the Privy Council.—We referred last week to the doctrine of Indian Law applied in the judgment of the Judicial Committee delivered by Lord Shaw in *Mullich* v. *Mullich* (*Times,* 29th ult.), that an idol is a juristic entity. It may be interesting to note that Lord Shaw himself had already given this as an example of the wide jurisdiction of that tribunal, and how all the law it administers is founded ultimately on Honesty: the *honeste vivere,* indeed, which Ulpian long ago laid down as the first precept of the law. This was in *The Law of the Kinsmen,* published three years ago, containing Lord Shaw's addresses on " The Widening Range of

Law" and "Law as a Link of Empire," the one to the American Bar Association, the other to the Canadian Bar Association. In the latter, describing the work of the Judicial Committee, he said:

"The very gods of India are juristic entities. They are the legitimate donees of vast endowments. Their properties and possessions are respected and protected. Each god, through the officers of his temple or the manager of religious endowments, educational endowments or sacred places, has a right and title to sue. . . It is the arraignment of the faithless by the faithful, and it is the glory of laws to interpose for the simplest of reasons, namely, that honesty is at stake."

So last week Lord Shaw was on quite familiar and, indeed, congenial ground.

—*The Law Journal*, May 9, 1925, p. 430.

The Adoption of Children.—For some years now there has been a growing feeling that it is high time that the legal position with regard to the adoption of children should be put upon a proper basis. It is, perhaps, at the moment hardly correct even to speak of the "legal position" with regard to this matter, since adoption, in the sense of the creation of a relationship analogous to that of parent and child between a child and one not its parent, is unknown to the law as it now stands. During the past few sessions of Parliament, Bills dealing with the subject and seeking to legalise adoption agreements have been regularly presented, and have in some cases made considerable progress, and, during the last five years, two expert Committees have carefully considered the subject from every angle. In August, 1920, the then Home Secretary appointed a committee with Sir Alfred Hopkinson, K. C. as Chairman, and Mr. Neville Chamberlain, M. P., Lady Norman, Mr. Seddon, M. P., and others as members, "to consider whether it is desirable to make legal provision for adoption of children in this country, and if so, what form such provision should take." That committee presented, in February, 1921, an exhaustive Report, and unanimously recommended the passing of legislation to give legal recognition to the adoption of children on lines specified in detail; the amendment of the Children Act of 1908 to secure notification and supervision of adoptions which did not receive formal legal

sanction ; and the legitimation of children born out of wedlock by the subsequent marriage of their parents. The last of these matters is being dealt with separately by a Bill introduced by the Lord Chancellor into the House of Lords this session.

—*The Law Journal*, May 9, 1925, p. 430.

Lord Birkenhead on Lord Mansfield.—Certainly the eighteenth century was a great time for Judge-made law. The legislature had not yet learned to interfere to any considerable extent by statute ; that was reserved for the nineteenth century; and what the present century will do and whether it will see Rules and Orders substituted as the chief source of law are questions for the future. But with Lord Hardwicke, of whom Lord Birkenhead wrote in the *Empire Review* last month, as the founder of equity jurisprudence, and with Lord Mansfield, of whom he writes this month, as "the founder of the commercial law of this country," the reputation of the eighteenth century is safe. The description just quoted, which Lord Birkenhead repeats from the eulogy of Mr. Justice Buller in *Lickbarrow* v. *Mason* (2 T. R. at p. 73) has passed into legal currency. It was Lord Mansfield's achievement that he brought the law into touch with the practical requirements of business life. "Coke," says Lord Birkenhead, "captured the law merchant for the common law ; Holt retained it ; Mansfield formally incorporated it into our system."

—*The Law Journal*, May 9, 1925, p. 431.

The New Judicial Committee Rules.—A new Code of Judicial Committee Rules has been passed by Order in Council dated May 2, 1925. These revoke the Judicial Committee Rules of 1908, and come into operation on January 1 next. This early issue of the Rules has been made in order that there may be time for their wide circulation throughout the Overseas Dominions before they take effect. The alterations are chiefly in the nature of machinery and do not substantially alter the practice, except in one respect, dealt with by Rule 4. This provides that, in future, applications for special leave to appeal must be accompanied by an affidavit of service of notice of the intended application upon the other parties. Hitherto it has been possible to make this application *ex parte* and the alteration is an important one. We never think of this Court without being impressed by the great position it

occupies in the world, rivalled only by the wide jurisdiction and recognised authority of the Supreme Court of the United States.

—*The Law Journal,* June 6, 1925, p. 525.

BOOK REVIEWS.

THE LAW OF COMPULSORY LAND ACQUISITION AND COMPENSATION, by S. G. Velinkar, with a Foreword by Sir Norman Macleod, Chief Justice of the Bombay High Court.

We have great pleasure in announcing the publication of *The Law of Compulsory Land Acquisition and Compensation* by one who is intimately connected with the administration of the law on the subject. His great experience in the working of the law will invest his observations with an authority which deserves serious consideration by those who have to deal with the subject. The work is one of the first-rate importance on the Law of Land Acquisition. The author has dealt with the Land Acquisition Act in Part I of the book. The commentaries are clear and concise and give reference in suitable places to all the decisions bearing upon the questions dealt with. English cases have been cited where the provisions of the English statute and Indian law are similar. Part II of the work contains all the enactments, Imperial and Provincial, dealing with Land Acquisition and Compensation, prominent among which may be mentioned, The City of Bombay Improvements Act, The Calcutta Improvement Acts, and The United Provinces Improvement Act. Commentaries are given under the sections of these Imperial and Provincial Acts wherever necessary with reference to case-law. The index to the work seems to have been prepared with very great care and will therefore be found to be of great assistance.

THE LAW OF TRANSFER (*inter vivos*) IN BRITISH INDIA, by Lal Gopal Mukerji, Judge, High Court of Judicature, Allahabad. Messrs. R. Cambray & Co., Calcutta.

This book which has for its basis the Transfer of Property Act is written not on the ordinary lines of a commentary but of a treatise on the subject illustrating the principles by the sections of the Transfer of Property Act and the discussions in the reported cases. The aim of the author has not been to

give a beadroll of cases but to deal with the subjects in their logical order omitting references to unnecessary case-law as much as possible. It is well known that the Transfer of Property Act while dealing in unnecessary detail with portions of Law of Property which are not of much practical use in this country is defective in not referring to some branches of the law of every-day use here. As instances of the latter we would refer to the law relating to partition, family arrangements and settlements. The treatment of the subject will be found of great use to the legislator desirous of effecting alterations and amendments in the Transfer of Property Act and to the student who has to keep the principles of law clearly before his mind, not to speak of the practical lawyer.

THE INDIAN STAMP ACT WITH COMMENTARIES, by S. Kasturirangachariar, B. A., B. L., Lawyers' Companion Series, 1925.

The various amending enactments of the central and local legislatures of the Indian Stamp Act and the accumulation of case-law on the subject have rendered the appearance of this book at this time as a very welcome publication. To avoid confusion the amendments made by the local legislatures of the various provinces have been indicated separately at the end of each section ; and in respect of the stamp duties detailed in Sch. I of the Act, the amounts of such duties have been sufficiently and clearly indicated in each province separately with the name of the province prefixed such amounts, so that at one glance the lawyer can get at the correct stamp duty without being put to the necessity of referring to the schedule of each local Act separately. The case-law has been brought down to the end of March, 1925, and the various appendices give the stamp rules of the Imperial and Local Governments which are sure to be found of great use.

THE IMPERIAL BANK CASE, published by Messrs. Rochouse & Sons, Madras.

We congratulate Messrs. Rochouse & Sons on this publication. *The Notable Trials Series* of England have been a big success and the proceedings from day to day of many an important and sensational criminal trial are available for reading in book form to the lawyer as well as the layman. The

idea of the publishers of the present volume is evidently to do the same with regard to the sensational "Imperial Bank Case" which was tried in the Madras High Court about a year ago by Mr. Justice Beasley and a special Jury. There is a brief historical introduction giving a summary of the facts relating to the case and then follows a *verbatim* report of the proceedings in the High Court. The printing and get up of the volume are good, and the price is not at all high. The numerous illustrations enhance the value of the publication.

[We invite the attention of the litigant public and the members of the legal profession to the new Judicial Committee Rules especially those relating to applications for special leave. The rules will come into operation in the place of the Judicial Rules, 1908, on the 1st January, 1926.]

THE JUDICIAL COMMITTEE RULES, 1925.

ST. R. AND O., 1925, No. 440|L.4.

At the Court at Buckingham Palace, the 2nd day of May, 1925.

PRESENT.

The King's Most Excellent Majesty.

Lord President. Chancellor of the Duchy of
Lord Chamberlain. Lancaster.

Sir George Lloyd.

Whereas there was this day read at the Board a representation from the Judicial Committee of the Privy Council in the words following, viz. :—

"The Lords of the Judicial Committee having taken into consideration the Practice and Procedure in accordance with which the general Appellate Jurisdiction of Your Majesty in Council is now exercised and being of opinion that the Rules regulating the said Practice and Procedure ought to be amended Their Lordships do hereby agree humbly to recommend to Your Majesty that with a view to such amendment certain Orders in Council regulating the said Practice and Procedure, viz., the Orders in Council dated respectively the 21st day of December, 1908, (*a*) the 23rd day of May, 1916, (*b*) the 25th day of March, 1920, (*c*) the 9th day of March, 1921, (*d*) and the 15th day of March, 1922, (*e*) amending the said Practice and Procedure

(*a*) S. R. & O., 1908, No. 1288.
(*b*) S. R. & O., 1919, No. 1810.
(*c*) S. R. & O., 1922, No. 789.
(*d*) S. R. & O., 1922, No. 278 (not printed in S. R. & O. form).
(*e*) S. R. & O., 1922, No. 279.

ought to be revoked as from the 1st day of January, 1926, and that the several Rules hereunto annexed ought to be substituted therefor and ought to come into operation on that date."

His Majesty having taken the said representation into consideration was pleased, by and with the advice of His Privy Council, to approve thereof and to order, as it is hereby ordered, that the said Orders in Council in the said representation mentioned be and the same are hereby revoked as from the 1st day of January, 1926, and that the Rules hereunto annexed be substituted therefor to come into operation on that date.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

Arrangement of Rules.

RULE.

1. Interpretation.

Leave to appeal.

2. Leave to appeal generally.

Special leave to appeal.

3. Form of Petition for special leave to appeal.
4. Five copies of Petition to be lodged together with Affidavits in support.
5. Time for lodging Petition.
6. Security for costs and transmission of Record.
7. General provisions.
8. Petitions for special leave to appeal *in forma pauperis.*
9. Exemption of pauper Appellant from lodging security and paying Office fees.
10. Exemption of unsuccessful Petitioner for leave to appeal *in forma pauperis* from payment of Office fees.

Record and Appearance by Appellant.

11. Record to be transmitted without delay.
12. Printing of Record.
13. Number of copies to be transmitted, where Record printed abroad.
14. One certified copy to be transmitted, where Record to be printed in England.
15. Record printed partly abroad, partly in England.
16. Reasons for judgments to be included.
17. Exclusion of unnecessary documents from Record.
18. Documents objected to to be indicated.
19. Registration and numbering of Records.
20. Inspection of Record by parties.
21. Appearance by Appellant.

22. Times within which a copy of a written Record shall be bespoken.
23. Preparation of copy of Record for printer.
24. Lodging copy of Record for printing.
25. Special Case.
26. Examination of proof of Record and striking off copies.
27. Number of copies of Record for parties.
28. How costs of printing Record are to be borne.

Petition of Appeal.

29. Times within which Petition shall be lodged.
30. Form of Petition.
31. Service of Petition.

Withdrawal of Appeal.

32. Withdrawal of Appeal before Petition of Appeal has been lodged.
33. Withdrawal of Appeal after Petition of Appeal has been lodged.

Non-prosecution of Appeal.

34. Dismissal of Appeal where Appellant takes no step in prosecution thereof.
35. Dismissal of Appeal for non-prosecution after Appellant's Appearance and before lodgment of Petition of Appeal.
36. Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.
37. Restoring an Appeal dismissed for non-prosecution.

Appearance by Respondent.

38. Time within which Respondent may appear.
39. Notice of Appearance by Respondent.
40. Form of Appearance where all the Respondents do not appear.
41. Separate Appearances.
42. Non-appearing Respondent not entitled to receive notices or lodge Case.
43. Procedure on non-appearance of Respondent.
44. Respondent defending Appeal *in forma pauperis.*

Petitions generally.

45. Mode of addressing Petitions.
46. Orders on Petitions which need not be drawn up.
47. Form of Petition and number of copies to be lodged.
48. Caveat.
49. Service of Petition.
50. Verifying Petition by Affidavit.
51. Petition for Order of Revivor or Substitution.

52. Petition disclosing no reasonable cause of appeal or containing scandalous matter to be refused.
53. Setting down Petition.
54. Times within which set-down Petitions shall be heard.
55. Notice to parties of day fixed for hearing Petition.
56. Procedure where Petition is consented to or is formal.
57. Withdrawal of Petition.
58. Procedure where hearing of Petition unduly delayed.
59. Only one Counsel heard on a side in Petitions.

Case.

60. Lodging of Case.
61. Printing of Case.
62. Number of prints to be lodged.
63. Form of Case.
64. Separate Cases by two or more Respondents.
65. Notice of lodgment of Case.
66. Case Notice.
67. Setting down Appeal and exchanging Cases.

Binding Records, etc.

68. Mode of binding Records, etc., for use of Judicial Committee.
69. Time within which bound copies shall be lodged.

Hearing.

70. Notice of day on or before which Appeals must be set down for ensuing Sittings.
71. Notice to parties of day fixed for hearing Appeal.
72. Only two Counsel heard on a side in Appeals.
73. Nautical Assessors.

Judgment.

74. Notice to parties of day fixed for delivery of Judgment.

Costs.

75. Taxation of costs.
76. What costs taxed in England.
77. Order to tax.
78. Power of Taxing Officer where taxation delayed through the fault of the party whose costs are to be taxed.
79. Appeal from decision of Taxing Officer.
80. Amount of taxed costs to be inserted in His Majesty's Order in Council.
81. Taxation on the pauper scale.
82. Security to be dealt with as His Majesty's Order in Council determining Appeal directs.

Miscellaneous.

83. Power of Judicial Committee to excuse from compliance with Rules.

84. Amendment of documents.
85. Affidavits may be sworn before the Registrar of the Privy Council.
86. Change of Agent.
87. Scope of application of Rules.
88. Mode of citation and date of operation.
Schedule A.—Rules as to printing.
Schedule B.—Countries and places referred to in Rules 22, 29 and 34.
Schedule C.—I. Fees allowed to Agents.
II. Council Office Fees.

---

1. [*Interpretation.*] (1) In these Rules, unless the context otherwise requires :—

"Appeal" means an Appeal to His Majesty in Council ;

"Judgment" includes decree, order, sentence, or decision of any Court, Judge, or Judicial Officer ;

"Record" means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal ;

"Registrar" means the Registrar or other proper officer having the custody of the records in the Court appealed from ;

"Abroad" means the country or place where the Court appealed from is situate ;

"Agent" means a person qualified by virtue of Her late Majesty's Order in Council of the 6th March, 1896, to conduct proceedings before His Majesty in Council on behalf of another ;

"Party" and all words descriptive of parties to proceedings before His Majesty in Council (such as "Petitioner," "Appellant," "Respondent") mean, in respect of all acts proper to be done by an Agent, the Agent of the party in question where such party is represented by an Agent ;

"Respondent" includes Intervener ;

"Month" means calendar month ;

Words in the singular shall include the plural, and words in the plural shall include the singular.

(2) Where by these Rules any step is required to be taken in England in connection with proceedings before His Majesty in Council, whether in the way of lodging a Petition or other document, entering an Appearance, lodging security, or otherwise, such step shall be taken in the Registry of the Privy Council, Downing Street, London.

Leave to appeal.

2. [*Leave to appeal generally.*] All Appeals shall be brought either in pursuance of leave obtained from the Court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a Petition in that behalf presented by the intending Appellant.

Special leave to appeal.

3. [*Form of Petition for special leave to appeal.*] A Petition for special leave to appeal to His Majesty in Council shall state succinctly and clearly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted, and shall be signed by the Counsel who attends at the hearing or by the party himself if he appears in person. The Petition shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

4. [*Five copies of Petition to be lodged together with Affidavits in support.*] The Petitioner shall lodge at least five copies of his Petition for special leave to appeal together with the Affidavit in support thereof prescribed by Rule 50 hereinafter contained, and, unless a Caveat as prescribed by Rule 48 has been lodged by the other parties who appeared in the Court below, an Affidavit of service of notice of the intended application upon such parties or their Solicitors or Agents, either abroad or in England.

5. [*Time for lodging Petition.*] A Petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the Petitioner shall, in every case, lodge his Petition with the least possible delay.

6. [*Security for costs and transmission of Record.*] Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their Report, specify the amount of the security for costs (if any) to be lodged by the Petitioner, and shall, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the Record by the Registrar to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Unless otherwise ordered the security shall be lodged at any time before the Appellant enters an Appearance.

7. [*General provisions.*] Save as by the four last preceding Rules otherwise provided, the provisions of Rules 47 to 50 and 52 to 59 (all inclusive) hereinafter contained shall apply *mutatis mutandis* to Petitions for special leave to appeal.

8. [*Petitions for special leave to appeal* in forma pauperis.] Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to Peti-

tions for leave to appeal *in forma pauperis,* but in addition to the Affidavits referred to in Rule 4 every such Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth 25*l.* in the world excepting his wearing apparel and his interest in the subject-matter of the intended Appeal, and that he is unable to provide sureties, and also by a certificate of Counsel that the Petitioner has reasonable ground of appeal.

9. [*Exemption of pauper Appellant from lodging security and paying Office fees.*] Where a Petitioner obtains leave to appeal *in forma pauperis,* he shall not be required to lodge security for the costs of the Respondent or to pay any Council Office fees.

10. [*Exemption of unsuccessful Petitioner for leave to appeal* in forma pauperis *from payment of Office fees.*] A Petitioner whose Petition for leave to appeal *in forma pauperis* is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a Petitioner in respect of a Petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

Record and Appearance by Appellant.

11. [*Record to be transmitted without delay.*] As soon as the Appeal has been admitted, whether by an Order of the Court appealed from or by an Order of His Majesty in Council granting special leave to appeal, the Appellant shall without delay take all necessary steps to have the Record transmitted to the Registrar of the Privy Council, and the Registrar shall, with all convenient speed, certify to the Registrar of the Privy Council that the Respondent has received notice, or is otherwise aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice, or is otherwise aware, of the dispatch of the Record to England. Where an Appellant who has obtained special leave to appeal by an Order of His Majesty in Council fails to have the Record transmitted to the Registrar of the Privy Council with due diligence, the Registrar of the Privy Council shall call upon the Appellant to explain his default, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the special leave to appeal granted should not be rescinded. The Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons recommend to His Majesty to rescind the grant of special leave to appeal or give such other directions therein as the justice of the case may require.

12. [*Printing of Record.*] The Record shall be printed in accordance with the Rules contained in Schedule A hereto. It may be printed either abroad or in England. When printed abroad the parties in England shall, upon perusal, consider whether the order of the documents is in accordance with these Rules, and if it is not, they shall agree upon the proper order. The Appellant shall then rearrange copies of the Record for the use of the Judicial Committee and the other parties. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

13. [*Number of copies to be transmitted, where Record printed abroad.*] Where the Record is printed abroad, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof, and by affixing thereto the seal, if any, of the Court appealed from.

14. [*One certified copy to be transmitted, where Record to be printed in England.*] Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

15. [*Record printed partly abroad, partly in England.*] Where part of the Record is printed abroad and part is to be printed in England, Rules 13 and 14 shall, as far as practicable, apply to such parts as are printed abroad and such as are to be printed in England respectively.

16. [*Reasons for judgments to be included.*] The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises, shall by such judge or judges be communicated in writing to the Registrar and shall be included in the Record.

17. [*Exclusion of unnecessary documents from Record.*] The Registrar, as well as the parties and their Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied shall be enumerated in a typewritten list to be transmitted with the Record.

18. [*Documents objected to to be indicated.*] Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record, as finally printed (whether abroad or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

19. [*Registration and numbering of Records.*] As soon as the Record is received in the Registry of the Privy Council, it shall be registered in the said Registry, with the date of arrival, the names of the parties, and the description whether "printed" or "written." A Record, or any part of a Record, not printed in accordance with the Rules contained in Schedule A hereto shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the Records are received in the said Registry.

20. [*Inspection of Record by parties.*] The parties shall be entitled to inspect the Record and to extract all necessary particulars therefrom for the purpose of entering an Appearance.

21. [*Appearance by Appellant.*] The Appellant shall enter an Appearance before taking any step in the prosecution of the Appeal, and after entering such Appearance shall forthwith give notice thereof to the Respondent, if the latter has entered an Appearance.

22. [*Times within which a copy of a written Record shall be bespoken.*] Where the Record arrives in England either wholly written, or partly written and partly printed, the Appellant shall, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeals from any other Courts, enter an Appearance and bespeak a typewritten copy of the Record, or of such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter)—2*d.* per folio of English matter, 2 1|2*d.* per folio of Indian matter, and 3 1|2*d.* per folio of foreign matter ; and shall also engage to pay at such price as shall be fixed by the Registrar of the Privy Council the cost of printing at least 50 copies thereof.

23. [*Preparation of copy of Record for printer.*] As soon as the Appellant has obtained the typewritten copy of the Record bespoken by him, he shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert marginal notes and check the same with the index, and, generally, to do whatever may be required for the purpose of preparing the copy for the printer, in accordance with the Rules contained in Schedule A hereto, and shall, if the Res-

pondent has entered an Appearance, submit the copy, as prepared for the printer, to the Respondent for his approval. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

24. [*Lodging copy of Record for printing.*] As soon as the typewritten copy of the Record is ready for the printer, the Appellant shall lodge it in the Registry of the Privy Council for printing by a printer selected by the Registrar of the Privy Council, and at the same time shall lodge the amount of the estimated cost of printing the Record.

25. [*Special Case.*] Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Judicial Committee in the form of a Special Case, and print such parts only of the Record as may be necessary for the discussion of the same, provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said Registrar may call the parties before him, and having heard them, and examined the Record, may report to the Judicial Committee as to the nature of the Proceedings.

26. [*Examination of proof of Record and striking off copies.*] The Registrar of the Privy Council shall, as soon as the proof prints of the Record are ready, give notice to all parties who have entered an Appearance requesting them to attend at the Registry of the Privy Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the certified Record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the Appellant shall, without delay, lodge his proof print, duly corrected and (so far as necessary) approved by the Respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the Record to be struck off from such proof print.

27. [*Number of copies of Record for parties.*] Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

28. [*How costs of printing Record are to be borne.*] Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the Record shall form part of the costs of the Appeal, but the costs of and incidental to the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

Petition of Appeal.

29. [*Times within which Petition shall be lodged.*] The Appellant shall lodge his Petition of Appeal—

(*a*) Where the Record arrives in England printed, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeals from any other Courts ;

(*b*) Where the Record arrives in England written, within a period of one month from, but not before, the date of the completion of the printing thereof :

Provided that nothing in this Rule contained shall preclude the Appellant from lodging his Petition of Appeal prior to the arrival of the Record, or the completion of the printing thereof, if there are special reasons why, in the opinion of the Registrar of the Privy Council, it should be desirable for him to do so.

30. [*Form of Petition.*] The Petition of Appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the Appeal from the commencement thereof down to the admission of the Appeal, but shall not contain argumentative matter or travel into the merits of the case.

31. [*Service of Petition.*] The Appellant shall, after lodging his Petition of Appeal, serve a copy thereof without delay on the Respondent, as soon as the latter has entered an Appearance, and shall endorse such copy with the date of the lodgment.

Withdrawal of Appeal.

32. [*Withdrawal of Appeal before Petition of Appeal has been lodged.*] Where an Appellant, who has not lodged his Petition of Appeal, desires to withdraw his Appeal, he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar shall, with all convenient speed after the receipt of such notice, by letter notify the Registrar of the Court appealed from that the Appeal has been withdrawn, and the said Appeal shall thereupon stand dismissed as from the date of the said letter without further Order.

33. [*Withdrawal of Appeal after Petition of Appeal has been lodged.*] Where an Appellant, who has lodged his Petition of Appeal, desires to withdraw his Appeal, he shall present a Petition to that effect to His Majesty in Council. On the hearing of any such Petition a Respondent who has entered an Appearance in the Appeal shall, subject to any agreement between him and the Appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Respondent has not entered an Appearance ; or, having entered an Appearance, consents in writing to the prayer of the Petition,

the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of Rule 56 hereinafter contained.

Non-prosecution of Appeal.

34. [*Dismissal of Appeal where Appellant takes no step in prosecution thereof.*] Where an Appellant takes no step in prosecution of his Appeal within a period of four months from the date of the arrival of the Record in England in the case of an Appeal from a Court situate in any of the countries or places named in Schedule B hereto, or within a period of two months from the same date in the case of an Appeal from any other Court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to any Respondent who has entered an Appearance in the Appeal.

35. [*Dismissal of Appeal for non-prosecution after Appellant's Appearance and before lodgment of Petition of Appeal.*] Where an Appellant who has entered an Appearance—

(*a*) fails to bespeak a copy of a written Record, or of part of a written Record, in accordance with, and within the periods prescribed by, Rule 22; or

(*b*) having bespoken such copy within the periods prescribed by Rule 22, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said Record ; or

(*c*) fails to lodge his Petition of Appeal within the periods respectively prescribed by Rule 29;

the Registrar of the Privy Council shall call upon the Appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been effectually prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an Appearance in the Appeal.

36. [*Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.*] Where an Appellant, who has lodged his Petition of Appeal, fails thereafter to prosecute his Appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar

shall issue a summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the Appeal should not be dismissed for non-prosecution Provided that no such Summons shall be issued by the said Registrar before the expiration of one year from the date of the arrival of the Record in England. If the Respondent has entered an Appearance in the Appeal, the Registrar of the Privy Council shall send him a copy of the said Summons, and the Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons at the time named and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty the dismissal of the Appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

37. [*Restoring an Appeal dismissed for non-prosecution.*] An Appellant whose Appeal has been dismissed for non-prosecution may present a Petition to His Majesty in Council praying that his Appeal may be restored.

Appearance by Respondent.

38. [*Time within which Respondent may appear.*] The Respondent may enter an Appearance at any time between the arrival of the Record and the hearing of the Appeal, but if he unduly delays entering an Appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

39. [*Notice of Appearance by Respondent.*] The Respondent shall forthwith after entering an Appearance give notice thereof to the Appellant, if the latter has entered an Appearance.

40. [*Form of Appearance where all the Respondents do not appear.*] Where there are two or more Respondents, and only one, or some, of them enter an Appearance, the Appearance Form shall set out the names of the appearing Respondents.

41. [*Separate Appearances.*] Two or more Respondents may, at their own risk as to costs, enter separate Appearances in the same Appeal.

42. [*Non-appearing Respondent not entitled to receive notices or lodge Case.*] A Respondent who has not entered an Appearance shall not be entitled to receive any notices relating to the Appeal from the Registrar of the Privy Council, nor be allowed to lodge a Case in the Appeal.

43. [*Procedure on non-appearance of Respondent.*] Where a Respondent fails to enter an Appearance in an Appeal, the following Rules shall, subject to any special Order of the Judicial Committee to the contrary, apply :—

(*a*) If the non-appearing Respondent was a Respondent at the time when the Appeal was admitted, whether by the Order of the Court appealed from or by an Order of His Majesty in Council giving the Appellant special leave to appeal, and it appears from the terms of the said Order, or Order in Council, or otherwise from the Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of the Order of the Court, appealed from admitting the Appeal, or of the Order of His Majesty in Council, giving the Appellant special leave to appeal, and has also received notice, or was otherwise aware, of the dispatch of the Record to England, the appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date of the lodging of the Petition of Appeal ;

(*b*) If the non-appearing Respondent was made a Respondent by an Order of His Majesty in Council subsequently to the admission of the Appeal, and it appears from the Record, or from a Supplementary Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of any intended application to bring him on the record as a Respondent, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date on which he shall have been served with a copy of His Majesty's Order in Council bringing him on the Record as a Respondent :

Provided that where it is shown to the satisfaction of the Registrar of the Privy Council, by Affidavit or otherwise, either that an Appellant has made every reasonable endeavour to serve a non-appearing Respondent with the notices mentioned in clause (*a*) and (*b*) respectively and has failed to effect such service, or that it is not the intention of the non-appearing Respondent to enter an Appearance to the Appeal, the Appeal may, without further Order in that behalf and at the risk of the Appellant, be proceeded with *ex parte* as against the said non-appearing Respondent.

44. [*Respondent defending Appeal* in forma pauperis.] A Respondent who desires to defend an Appeal *in forma pauperis* may present a Petition to that effect to His Majesty in Council, which Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the Appeal.

Petitions generally.

45. [*Mode of addressing petitions.*] All Petitions for orders or directions as to matters of practice or procedure arising after the

lodging of the Petition of Appeal and not involving any change in the parties to an Appeal shall be addressed to the Judicial Committee. All other Petitions shall be addressed to His Majesty in Council, but a Petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

46. [*Orders on Petitions which need not be drawn up.*] Where an Order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw up such Order, unless the Committee otherwise direct, but a Note thereof shall be made by the Registrar of the Privy Council.

47. [*Form of Petition and number of copies to be lodged.*] All Petitions shall consist of paragraphs numbered consecutively and shall be written, typewritten, or lithographed, on brief paper with quarter margin and endorsed with the name of the Court appealed from, the full title and Privy Council number of Appeal to which the Petition relates or the full title of the Petition (as the case may be), and the name and address of the London Agent (if any) of the Petitioner, but need not be signed, except as provided by Rule 3. Unless the Petition is a Consent Petition within the meaning of Rule 56 at least five copies thereof shall be lodged.

48. [*Caveat.*] Where a Petition is expected to be lodged, or has been lodged, which does not relate to any pending Appeal of which the Record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such Petition may lodge a Caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the Petition, if at the time of the lodging of the Caveat such Petition has not yet been lodged, and, if and when the Petition has been lodged, to require the Petitioner to serve him with a copy of the Petition, and to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition. The Caveator shall forthwith after lodging his Caveat give notice thereof to the Petitioner, if the Petition has been lodged.

49. [*Service of Petition.*] Where a Petition is lodged in the matter of any pending Appeal of which the Record has been registered in the Registry of the Privy Council, the Petitioner shall serve any party who has entered an Appearance in the Appeal with a copy of such Petition, and the Party so served shall thereupon be entitled to require the Petitioner to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition.

50. [*Verifying Petition by Affidavit.*] A Petition not relating to any Appeal of which the Record has been registered in the Registry of the Privy Council, and any other Petition containing allegations of fact which cannot be verified by reference to the registered Record or

any certificate or duly authenticated statement of the Court appealed from, shall be supported by Affidavit. Where the Petitioner prosecutes his Petition in person, the said Affidavit shall be sworn by the Petitioner himself and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true. Where the Petitioner is represented by an Agent, the said Affidavit shall be sworn by such Agent and shall, besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true, show how the deponent obtained his instructions and the information enabling him to present the Petition.

51. [*Petition for Order of Revivor or Substitution.*] A Petition for an Order of Revivor or Substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of the said Court, is the proper person to be substituted, or entered, on the Record in place of, or, in addition to, a party who has died or undergone a change of status.

52. [*Petition disclosing no reasonable cause of appeal or containing scandalous matter to be refused.*] The Registrar of the Privy Council may refuse to receive a Petition on the grounds that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter, but the Petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

53. [*Setting down Petition.*] As soon as a Petition and all necessary documents are lodged the Petition shall thereupon be deemed to be set down.

54. [*Times within which set-down Petitions shall be heard.*] On each day appointed by the Judicial Committee for the hearing of Petitions the Registrar of the Privy Council shall, unless the Committee otherwise direct, put in the paper for hearing all such Petitions as have been set down Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said Registrar, no Petition, if opposed, shall be put in the paper for hearing before the expiration of ten clear days from the lodging thereof, unless the Opponent consents to the Petition being put in the paper on an earlier day.

55. [*Notice to parties of day fixed for hearing Petition.*] Subject to the provisions of the next following Rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a petition, notify all parties concerned by Summons of the day so appointed.

56. [*Procedure where Petition is consented to or is formal.*] Where the prayer of a Petition is consented to in writing by the opposite party, or where a Petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their Report

to His Majesty on such Petition, or make their Order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the Summons provided for by the last-preceding Rule, but shall with all convenient speed after the Committee have made their Report or Order notify the parties that the Report or Order has been made and of the date and nature of such Report or Order.

57. [*Withdrawal of Petition.*] A Petitioner who desires to withdraw his Petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the Petition is opposed, the Opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Petition is unopposed, or where, in the case of an opposed Petition, the parties have come to an agreement as to the costs of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of the last-preceding Rule.

58. [*Procedure where hearing of Petition unduly delayed.*] Where a Petitioner unduly delays bringing a Petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may, after notifying all parties interested by Summons of his intention to do so, put the Petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of Petitions for such directions as the Committee may think fit to give thereon.

59. [*Only one Counsel heard on a side in Petitions.*] At the hearing of a Petition not more than one Counsel shall be admitted to be heard on a side.

Case.

60. [*Lodging of Case.*] No party to an Appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his Case in the Appeal Provided that where a Respondent who has entered an Appearance does not desire to lodge a Case in the Appeal, he may give the Registrar of the Privy Council notice in writing of his intention not to lodge any Case, while reserving his right to address the Judicial Committee on the question of costs.

61. [*Printing of Case.*] The Case may be printed either abroad or in England, and shall, in either event, be printed in accordance with the Rules I to III contained in Schedule A hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the Appeal or by the party himself if he conducts his Appeal in person.

62. [*Number of prints to be lodged.*] Each party shall lodge 30 prints of his Case.

63. [*Form of Case.*] The Case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the Record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The Taxing Officer, in taxing the costs of the Appeal, shall, either of his own motion, or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby.

64. [*Separte Cases by two or more Respondents.*] Two or more Respondents may, at their own risk as to costs, lodge separate Cases in the same Appeal.

65. [*Notice of lodgment of Case.*] Each party shall, after lodging his Case, forthwith give notice thereof to the other party.

66. [*Case Notice.*] Subject as hereinafter provided, the party who lodges his Case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last-preceding Rule, serve such other party, if the latter has not in the meantime lodged his Case, with a "Case Notice," requiring him to lodge his Case within one month from the date of the service of the said Case Notice and informing him that, in default of his so doing, the Appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said Case Notice, the party who has lodged his Case may, at any time after the expiration of the time limited by the said Case Notice for the lodging of the Case, lodge an Affidavit of Service (which shall set out the terms of the said Case Notice), and the Appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default Provided that no Case Notice shall be served until after the completion of the printing, or rearrangement under Rule 12, of the Record, and also that nothing in this Rule contained shall preclude the party in default from lodging his Case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

67. [*Setting down Appeal and exchanging Cases.*] Subject to the provisions of Rule 43 and of the last-preceding Rule, an Appeal shall be set down *ipso facto* as soon as the Cases on both sides are lodged, and the parties shall thereupon exchange Cases by handing one another, either at the Offices of one of the Agents or in the Registry of the Privy Council, ten copies of their respective Cases.

Binding Records, etc.

68. [*Mode of binding Records, etc., for use of Judicial Committee.*] As soon as an appeal is set down, the Appellant shall attend at the Registry of the Privy Council and obtain ten copies of the Record and Cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in half leather with paper sides, and six leaves of blank paper shall be inserted before the Appellant's Case. The front cover shall bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London Agents. The several documents, indicated by incuts, shall be arranged in the following order : (1) Appellant's Case ; (2) Respondent's Case ; (3) Record (if in more than one part, showing the separate parts by incuts, all parts being paged at the top of the page); (4) Supplemental Record (if any); and the short title and Privy Council number of the Appeal shall also be shown on the back.

69. [*Time within which bound copies shall be lodged.*] The Appellant shall lodge the bound copies not less than four clear days before the commencement of the Sittings during which the Appeal is to be heard.

Hearing.

70. [*Notice of day on or before which Appeals must be set down for ensuing Sittings.*] The Registrar of the Privy Council shall name a day on or before which Appeals must be set down if they are to be entered in the List of Business for the ensuing Sittings. All Appeals set down on or before the day named shall, subject to any directions from the Committee or to any agreement between the parties to the contrary, be entered in such List of Business and shall, subject to any directions from the Committee to the contrary, be heard in the order in which they are set down.

71. [*Notice to parties of day fixed for hearing Appeal.*] The Registrar of the Privy Council shall, subject to the provisions of R. 42, notify the parties to each Appeal by Summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the Appeal, and the parties shall be in readiness to be heard on the day so appointed.

72. [*Only two Counsel heard on a side in Appeals.*] At the hearing of an Appeal not more than two Counsel shall be admitted to be heard on a side.

73. [*Nautical Assessors.*] In Admiralty Appeals the Judicial Committee may, if they think fit, require the attendance of two Nautical Assessors.

Judgment.

74. [*Notice to parties of day fixed for delivery of Judgment.*] Where the Judicial Committee, after hearing an Appeal, decide to reserve their Judgment thereon, the Registrar of the Privy Council shall in due course notify the parties by Summons of the day appointed by the Committee for the delivery of the Judgment.

Costs.

75. [*Taxation of costs.*] All Bills of Costs under the Orders of the Judicial Committee on Appeals, Petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the Schedule of Fees set forth in Schedule C hereto.

76. [*What costs taxed in England.*] The taxation of costs in England shall be limited to costs incurred in England.

77. [*Order to tax.*] The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an Appeal, Petition, or other matter, issue to the party to whom costs have been awarded an Order to tax and a Notice specifying the day and hour appointed by him for taxation. The party receiving such Order to tax and Notice shall, not less than 48 hours before the time appointed for taxation, lodge his Bill of Costs (together with all necessary vouchers for disbursements) and serve the opposite party with a copy of his Bill of Costs and of the Order to tax and Notice.

78. [*Power of Taxing Officer where taxation delayed through the fault of the party whose costs are to be taxed.*] The Taxing Officer may, if he thinks fit, disallow to any party who fails to lodge his Bill of Costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding Rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his Bill of Costs and attending the taxation.

79. [*Appeal from decision of Taxing Officer.*] Any party aggrieved by a taxation may appeal from the decision of the Taxing Officer to the Judicial Committee. The Appeal shall be heard by way of motion, and the party appealing shall give three clear days' Notice of Motion to the opposite party, and shall also leave a copy of such Notice in the Registry of the Privy Council.

80. [*Amount of taxed costs to be inserted in His Majesty's Order in Council.*] The amount allowed by the Taxing Officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the Committee to the contrary, be inserted in His Majesty's Order in Council determining the Appeal or Petition.

81. [*Taxation on the pauper scale.*] Where the Judicial Committee directs costs to be taxed on the pauper scale, the Taxing Officer shall not allow any fees of Counsel, and shall only award to the Agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary Appeals. Such pauper scale shall apply to and include the application upon which leave to appeal *in forma pauperis* was granted.

82. [*Security to be dealt with as His Majesty's Order in Council determining Appeal directs.*] Where the Appellant has lodged security for the Respondent's costs of an Appeal in the Registry of the Privy Council, the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the Appeal.

Miscellaneous.

83. [*Power of Judicial Committee to excuse from compliance with Rules.*] The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused from compliance with the requirements of any of these Rules shall be addressed in the first instance to the Registrar of the Privy Council, who shall take the instructions of the Committee thereon and communicate the same to the parties. If, in the opinion of the said Registrar, it is desirable that the application should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

84. [*Amendment of documents.*] Any document lodged in connection with an Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

85. [*Affidavits may be sworn before the Registrar of the Privy Council.*] Affidavits relating to any Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council.

86. [*Change of Agent.*] Where a party to an Appeal, Petition, or other matter pending before His Majesty in Council changes his Agent, such party, or the new Agent, shall forthwith give the Registrar of the Privy Council and the outgoing Agent notice in writing of the change, and shall amend the Appearance accordingly. Until such

notices are given the former Agent shall be considered the Agent of the party until the final conclusion of the Appeal, Petition, or other matter.

87. [*Scope of application of Rules.*] Subject to the provisions of any Statute or of any Statutory Rule or Order to the contrary, these Rules shall apply to all matters falling within the Appellate Jurisdiction of His Majesty in Council.

88. [*Mode of citation and date of operation.*] These Rules may be cited as the Judicial Committee Rules, 1925, and they shall come into operation on the 1st day of January, 1926.

SCHEDULE A.

Rules as to Printing.

I. All Records and other proceedings in Appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above Rules to be printed shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8 1|2 inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter, and notes. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

IV. Records shall be arranged in two parts in the same volume, where practicable, viz. :—

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the Judgments, Decrees, &c., of the Courts below, down to the Order admitting the Appeal.

Part II. The exhibits and documents.

V. The Index to Part I. shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II. shall follow the order of exhibit mark, and shall be placed immediately after the Index to Part I.

VI. Part I. shall be arranged strictly in chronological order, *i. e.*, in the same order as the index.

Part II. shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order,

mixing Plaintiff's and Defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as

(*a*) a series of correspondence, or

(*b*) proceedings in a suit other than the one under appeal,

shall be kept together. The order in the Record of the documents in Part II. will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

VII. The documents in Part I. shall be numbered consecutively.

The documents in Part II. shall not be numbered, apart from the exhibit mark.

VIII. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the Index, without the date.

IX. Each document shall have a marginal note which shall be repeated on each page over which the document extends, *viz.* :—

Part I.

(*a*) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(*b*) The marginal note of the document shall then appear consisting of the number and the description of the document in the Index, with the date, except in the case of oral evidence.

(*c*) In the case of oral evidence, "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the Court, and then the marginal note consisting of the number in the Index and the witness's name, with "examination," "cross-examination," or "re-examination," as the case may be.

Part II.

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index, with the date.

X. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the words "not printed" against it.

A long series of documents, such as accounts, rent rolls, inventories, &c., shall not be printed in full, unless Counsel so advise, but the parties shall agree to short extracts being printed as specimens.

XI. In cases where maps sent from abroad are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from abroad, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

SCHEDULE B.

Countries and places referred to in Rules 22, 29, and 34.

Australia, British Honduras, British North Borneo, Brunei, Ceylon, China, Eastern African Dependencies, Falkland Islands, Federated Malay States, Fiji, Hong Kong, India, Mauritius, New Zealand, Persia, Seychelles, Somaliland Protectorate, Straits Settlements.

SCHEDULE C.

I

FEES ALLOWED TO AGENTS CONDUCTING APPEALS OR OTHER MATTERS BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

(33 1|3 *per cent. is added to these fees.*)

		£	s.	d.
Retainer fee	...	0	13	4
Drawing Appearance or Caveat	...	0	5	0
Perusing printed Record, for every printed sheet of 8 pages	...	1	1	0
Perusing written Record, for every 25 folios	...	0	6	8
Drawing Index	per folio...	0	2	0
Drawing Marginal Notes and Headings	per folio ...	0	0	6
Attending at the Registry to examine proof print of Record with the certified Record	per day...	3	3	0
	per half day ...	1	11	6
Correcting revised print of Record, per sheet of 8 pages :—				
Foreign or Indian cases	...	1	1	0
Other cases	...	0	10	6
Instruction for Petition or Motion, or to Oppose	...	0	10	0
Instructions for Petition of Appeal	...	0	10	0
Instructions for Case	...	1	0	0
Drawing Petition, Motion, Case or Affidavit	per folio ...	0	2	0
Copying Petition, Motion, Case or Affidavit	per folio ...	0	0	6

	£	s.	d.
Correcting proof of Case, per sheet of 8 pages :—			
Foreign or Indian cases ...	1	1	0
Other cases ...	0	10	6
Drawing and fair copy Case Notice ...	0	10	0
Perusing Petition, Motion, or Affidavit per folio ...	0	2	0
Perusing Petition of Appeal ...	1	1	0
Perusing Case, per printed sheet of 8 pages ...	1	1	0
Instructions for and preparing Retainer to Counsel ...	0	10	0
Instructions to Counsel to argue an Appeal ...	1	0	0
Instructions to Counsel to argue a Petition or Motion...	0	10	0
Instructions to printer ...	0	10	0
Attending Consultation ...	1	0	0
Attending at the Council Chamber for the hearing of a Petition of Motion ...	1	6	8
Attending at the Council Chamber all day on an Appeal not called on ...	2	6	8
Attending the hearing of an Appeal per day ...	3	6	8
Attending a Judgment ...	1	6	8
Approving draft Order ...	0	10	0
Attendances generally ...	0	10	0
Attendances on Counsel where fee is 30 guineas or over ...	1	0	0
Drawing Bill of Costs per folio ...	0	1	0
Copying Bill of Costs per folio ...	0	0	6
Attending Taxation of Costs of an Appeal ...	2	2	0
Attending Taxation of Costs of a Petition or Motion ...	1	1	0
Sessions Fee for each year or part of a year from the date of Appearance (in Appeals only) ...	3	3	0
Letters, &c. (in Petitions) ...	1	1	0
Letters, &c. (in Appeals) for 1st year ...	2	2	0
For each following year ...	1	1	0

II

Council Office Fees.

Entering Appearance ...	1	0	0
Amending Appearance ...	0	10	0
Examining proof print of Record with the certified record at the Registry (chargeable to Appellant only)			
per day ...	2	0	0
per half day ...	1	0	0
Lodging Petition of Appeal ...	3	0	0
Lodging Petition for special leave to appeal ...	2	0	0
Lodging any other Petition or Motion ...	1	0	0
Lodging Case or Notice under Rule 60 ...	2	0	0
Setting down Appeal (chargeable to Appellant only) ...	5	0	0
Setting down Petition for special leave to appeal (chargeable to Petitioner only) ...	2	0	0

	£	s.	d.
Setting down any other Petition (chargeable to Petitioner only)	1	0	0
Summons ...	1	0	0
Committee Report on Petition ...	2	0	0
Committee Report on Appeal ...	3	0	0
Original Order of His Majesty in Council determining an Appeal ...	5	0	0
Any other original Order of His Majesty in Council ...	3	0	0
Plain copy of an Order of His Majesty in Council ...	0	5	0
Original Order of the Judicial Committee	2	0	0
Plain copy of Committee Order ...	0	5	0
Lodging Affidavit ...	0	10	0
Certificate delivered to parties ...	0	10	0
Lodging Caveat ...	1	0	0
Subpoena to witnesses ...	0	10	0

Taxing Fee 6d. for each pound allowed, or a fraction thereof, up to £300, and one per cent. beyond that sum, calculated at the rate of 5s. for each £25, or a portion thereof.